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HOUSE BILL 109

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

W. Ken Martinez

AN ACT

RELATING TO GRAND JURIES; CHANGING PROCEDURES FOR GRAND JURY HEARINGS; PROVIDING THE TARGET OF A GRAND JURY HEARING WITH NOTICE OF HIS STATUS AS A TARGET; AMENDING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-6-3 NMSA 1978 (being Laws 1969, Chapter 276, Section 3) is amended to read:

"31-6-3. CHALLENGE TO GRAND JURY.--Any person held to answer for an offense by grand jury indictment, upon arraignment to the charge therein, by motion to quash the indictment stating with particularity the ground therefor, may challenge the validity of the grand jury. A failure to file such motion is a waiver of the challenge. Grounds that may be presented by such motion are limited to the following:

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1 A. the grand jury was not selected in accordance
2 with law;

3 B. a member of the grand jury returning the
4 indictment was ineligible to serve as a juror; ~~[or]~~

5 C. a member of the grand jury returning the
6 indictment was a potential witness ~~[against the person~~
7 ~~indicted]~~ in the grand jury proceedings; or

8 D. a member of the grand jury returning the
9 indictment was not qualified to serve due to a conflict of
10 interest, bias, partiality or inability to follow the law."

11 Section 2. Section 31-6-4 NMSA 1978 (being Laws 1969,
12 Chapter 276, Section 4, as amended) is amended to read:

13 "31-6-4. TIME AND PLACE FOR HEARING--PRIVACY OF
14 HEARINGS--WITNESSES PERMITTED TO HAVE ATTORNEY PRESENT.--

15 A. A grand jury shall conduct its hearing during
16 the usual business hours of the court which convened it.
17 Hearings and deliberations may be conducted at any place
18 ordered by the convening judge and provided by the court.
19 Inspections or grand jury views of places under inquiry may be
20 made when directed by the foreman wherever deemed necessary
21 within the county, but no oral testimony or other evidence may
22 be received except during formal private sessions.

23 B. All deliberations ~~[will]~~ shall be conducted in a
24 private room outside the hearing or presence of any person
25 other than the grand jury members. All taking of testimony

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1 [with] shall be in private with no persons present other than
2 the grand jury, the persons required or entitled to assist the
3 grand jury and the attorney, if any, of the target [witness].

4 C. Persons required or entitled to be present at
5 the taking of testimony before the grand jury ~~may~~ include the
6 district attorney and the attorney general and their staffs,
7 interpreters, court reporters, security officers, the witness
8 and an attorney for the target [witness; ~~provided that such~~].
9 Security personnel may be present only with special leave of
10 the district court and are neither potential witnesses nor
11 otherwise interested parties in the matter being presented to
12 the grand jury.

13 D. If a target [witness] has his attorney present,
14 the attorney may ~~[be present only while the target witness is~~
15 ~~testifying and may advise the witness but may not speak so that~~
16 ~~he can be heard by the grand jurors or otherwise]~~ participate
17 in the proceedings by assisting the target's testimony and
18 assisting other witnesses who testify on behalf of the target."

19 Section 3. Section 31-6-5 NMSA 1978 (being Laws 1969,
20 Chapter 276, Section 5, as amended) is amended to read:

21 "31-6-5. RETURN OF INDICTMENTS. --Indictments shall be
22 returned by the grand jury within twenty-four hours following
23 the day when the indictment is voted. Indictments shall not
24 name persons as unindicted coconspirators. Indictments may be
25 filed and prosecution and trial had thereon without regard to

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1 court terms. No-bills shall be sealed and filed with the
2 district court clerk. Upon application to the court by the
3 state [~~or the person named in the proposed indictment, the~~
4 ~~court may release a sealed no-bill~~] for good cause shown, or
5 upon request by the target, the court may release a sealed no-
6 bill. "

7 Section 4. Section 31-6-7 NMSA 1978 (being Laws 1969,
8 Chapter 276, Section 7, as amended) is amended to read:

9 "31-6-7. ASSISTANCE FOR GRAND JURY--REPORT.--

10 A. The district court shall assign necessary
11 personnel to aid the grand jury in carrying out its duties.
12 The district attorney or his assistants shall attend the grand
13 jury, examine witnesses and prepare indictments, reports and
14 other undertakings of the grand jury.

15 B. When engaged in the investigation of an offense
16 over which he has jurisdiction, the attorney general or his
17 assistants may attend a grand jury, examine witnesses and
18 prepare indictments, reports and other undertakings of the
19 grand jury.

20 C. When a grand jury is convened in response to a
21 citizens' grand jury petition pursuant to Article 2, Section 14
22 of the constitution of New Mexico, the district attorney or his
23 assistants, unless otherwise disqualified, shall attend and
24 conduct the grand jury.

25 D. A prosecuting attorney attending a grand jury

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1 and all grand jurors shall conduct [himself] themselves in a
2 fair and impartial manner at all times [~~when assisting the~~
3 ~~grand jury~~] during grand jury proceedings.

4 E. A grand jury, in its discretion, may make a
5 formal, written report as to the condition and operation of any
6 public office or institution it has investigated. The report
7 shall not charge any public officer or other person with
8 willful misconduct, corruption or malfeasance unless an
9 indictment or accusation for removal from public office is also
10 returned by the grand jury. The right of every person to be
11 properly charged, face his accusers and be heard in his defense
12 in open court shall not be circumvented by the report."

13 Section 5. Section 31-6-9 NMSA 1978 (being Laws 1969,
14 Chapter 276, Section 9, as amended) is amended to read:

15 "31-6-9. CHARGE TO GRAND JURY--QUESTIONS OF LAW--

16 A. The district judge convening a grand jury shall
17 charge it with its duties and direct it as to any special
18 inquiry into violations of law that he wishes it to make.

19 B. The district judge presiding over a grand jury
20 shall make determinations regarding disputed questions of law
21 before the grand jury that are brought to the court's attention
22 by the grand jury foreman, the prosecuting attorney or the
23 target."

24 Section 6. Section 31-6-11 NMSA 1978 (being Laws 1969,
25 Chapter 276, Section 11, as amended) is amended to read:

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1 "31-6-11. EVIDENCE BEFORE GRAND JURY. --

2 A. Evidence before the grand jury upon which it may
3 find an indictment is that which is lawful, competent and
4 relevant, including the oral testimony of witnesses under oath
5 and any documentary or other physical evidence exhibited to the
6 jurors. The sufficiency [~~or competency~~] of the evidence upon
7 which an indictment is returned shall not be subject to review
8 absent a showing of bad faith on the part of the prosecuting
9 attorney assisting the grand jury.

10 B. It is the duty of the grand jury to weigh all
11 the evidence submitted to it, and when it has reason to believe
12 that other lawful, competent and relevant evidence is available
13 that may [~~explain away or~~] disprove or reduce a charge or
14 accusation or that would make an indictment unjustified, then
15 it [~~should~~] shall order the evidence produced. [~~The target~~
16 ~~shall be notified of his target status and be given an~~
17 ~~opportunity to testify, if he desires to do so, unless the~~
18 ~~prosecutor determines that notification may result in flight,~~
19 ~~endanger other persons, obstruct justice or the prosecutor is~~
20 ~~unable with reasonable diligence to notify said person. A~~
21 ~~showing of reasonable diligence in notifying the target by the~~
22 ~~prosecutor is not required unless and until the target~~
23 ~~establishes actual and substantial prejudice as a result of an~~
24 ~~alleged failure by the prosecutor to exercise reasonable~~
25 ~~diligence in notifying the target of his target status before~~

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1 ~~the grand jury. The prosecuting attorney assisting the grand~~
2 ~~jury shall present evidence that directly negates the guilt of~~
3 ~~the target where he is aware of such evidence.] The target or~~
4 his counsel may alert the grand jury to the existence of
5 evidence that may disprove or reduce an accusation or that
6 would make an indictment unjustified, by notifying the grand
7 jury foreman in writing regarding the existence of that
8 evidence.

9 C. A district attorney shall use reasonable
10 diligence to notify a person in writing that the person is the
11 target of a grand jury investigation. Unless the district
12 judge presiding over the grand jury determines by clear and
13 convincing evidence that providing notification may result in
14 flight by the target, result in obstruction of justice or pose
15 a danger to another person, the target of a grand jury
16 investigation shall be notified in writing of the following
17 information:

18 (1) that he is the target of an investigation;

19 (2) the nature of the alleged crime being
20 investigated, including the elements and dates of the alleged
21 crime and any applicable statutory citations;

22 (3) the target's right, within five days of
23 receiving the target notice, to provide written notice of his
24 decision to pursue a preliminary hearing or a grand jury
25 hearing. If the target does not provide such a written

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1 response, the matter shall proceed to a grand jury hearing;

2 (4) the target's right to testify no earlier
3 than ten days after receiving the target notice, unless the
4 target agrees to testify sooner;

5 (5) the target's right to choose to remain
6 silent;

7 (6) the target's right to assistance of
8 counsel during the grand jury investigation;

9 (7) the statutory requirement that the grand
10 jury be presented with lawful, competent and relevant evidence;
11 and

12 (8) the target's right to have presented to
13 the grand jury applicable instructions regarding offenses,
14 lesser offenses and defenses."

15 Section 7. EFFECTIVE DATE. --The effective date of the
16 provisions of this act is July 1, 2003.